

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In our memorandum in response to the petition in this case, we advised the Court that another case involving the same issue was pending before the Court of Claims and had been argued on January 14, 1964. *Keystone Tankship Corp. v. United States*, Docket No. 240-61. A decision in favor of the government in that case would have resolved the existing conflict of decisions and thereby eliminated the need for review of the question by this Court. For that reason we suggested that the Court withhold action on the petition in this case to await the decision of the Court of Claims in the *Keystone Tankship* case.

The next decision day of the Court of Claims was October 16, 1964. Upon the failure of the Court of Claims to announce a decision in the *Keystone Tank-*

ship case on that date, we asked the clerk of that court to inquire as to the status of the case. The clerk has now advised us, with the permission of the court, that the Court of Claims has decided not to take action in the *Keystone Tankship* case until the final disposition of the two cases pending in this Court on petitions for certiorari, this case and *National Bulk Carriers v. United States*, No. 246.

Because of the disposition of the Court of Claims not to reconsider its earlier decision prior to consideration of the question by this Court, we can no longer represent that the existing conflict may be independently resolved. In view of the admitted conflict and the abortion of the possibility that it might be resolved without the intervention of this Court, it is submitted that the petition for certiorari in this case should now be granted.

We do not, however, urge that the petition also be granted in the companion case, *National Bulk Carriers*, No. 246. The application of the price-adjustment provisions of the Merchant Ship Sales Act of 1946 to each case involves a rather complicated set of computations, and some mastery of the figures involved and what they represent is necessary to a full understanding of the nature of the adjustments. The two cases present exactly the same legal question but, of course, wholly different figures and computations. Even with two hours being allowed for argument, we believe the Court would find it easier to understand the application of the relatively complex statutory provisions in the context of a single set of figures rather than two, and we do not believe there is any

offsetting advantage to be gained by hearing argument in both cases. Action on the petition in No. 246, accordingly, might appropriately be withheld to await the final disposition of this case.¹ Alternatively, if the Court deems it appropriate to hear argument in both cases, we suggest that the two cases be placed on the summary calendar and that they be consolidated for purposes of oral argument.

Respectfully submitted.

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NOVEMBER 1964.

¹ We have no particular reason to prefer the selection of one case rather than the other for plenary argument. We have suggested the selection of this case (No. 245) only because it was the one first decided by the court of appeals and the one first docketed in this Court. We note also that it involves much the larger amount of money. Although it is not an important consideration, if only one record is to be printed, it does not seem inappropriate to place the burden on the petitioner with more at stake. And since the petitioners, obviously acting in cooperation, chose to docket this case first, they presumably also view it as the "main" case.